

Disposition of the Independent Review Panel



Complainant: Gerard P. Dumorange

IRP Case: A2004.006

Date: September 22, 2005

MDPD Case: IA 2004-0018

MDPD Investigation and Conclusion Time: **13 Months**

The Independent Review Panel met on September 22, 2005 for the purpose of publicly reviewing the complaint made by Mr. Dumorange against the Miami-Dade Police Department and the department's response to that complaint. The following represents the findings of the Panel:

A. Incident

Mr. Dumorange believes MDPD Officer Michael Scott retaliated against him because he refused to lie about a police involved shooting while he was working as a City of Miami police officer. Mr. Dumorange was terminated from the Miami Police Department on May 27, 2003.

On Friday, January 2, 2004, Officer Scott pulled Mr. Dumorange over for speeding. During the stop the complainant alleges Officer Scott called him a "snitch" and falsely arrested him for "impersonating a police officer." The complainant stated he identified himself as a "certified police officer," not as an acting police officer. The complainant also stated, once in custody, Officer Scott poked him in the forehead and left shoulder to antagonize him into a fight.

The complainant further stated that on January 7, 2004, undercover MDPD Officer Onel Musibay stopped him at NW 87th Street and 15th Avenue, removed paperwork from his vehicle and remarked to him, "You ain't shit."

B. Allegations

1. Officer Scott falsely arrested Mr. Dumorange for impersonating a police officer.
2. Officer Scott called Mr. Dumorange a "snitch."
3. Officer Scott poked Mr. Dumorange on the forehead and shoulder to antagonize him into a fight.
4. Officer Musibay removed paperwork from Mr. Dumorange's vehicle without cause.
5. Officer Musibay told Mr. Dumorange: "You ain't shit."

C. Disposition of the Independent Review Panel

1. Whether or not Mr. Dumorange was falsely arrested for impersonating a police officer is a matter for the courts to address.
2. Mr. Dumorange filed a motion to dismiss the charges, which were subsequently dismissed with prejudice.
3. The Panel found the allegations against Officer Michael Scott and Officer Onel Musibay to be **"Not Sustained"**. No evidence was found, other than the testimony of Mr. Dumorange, to support the allegations.

The Independent Review Panel concluded the complaint on September 23, 2005.

Independent Review Panel

Committee Recommendation to the Panel

September 22, 2005

Complaint: A 2004.006

MDPD Case: IA 2004-0018

Complainant: Gerard P. Dumorange

Accused Party: Miami-Dade Police Department (MDPD), Officer Michael Scott and Officer Onel Musibay

Date Complaint Received: January 13, 2004

Materials Reviewed: Correspondence, IA Case 2004-0018, staff notes and committee notes

Committee: Chairman Jorge E. Reynardus, Esq., Panel Member; Dr. Eduardo Diaz, Executive Director; Carol Boersma, Executive Assistant to the Director; Fernando L. Robreño, Conflict Resolution Specialist

Meeting Date: June 9, 2005

Present: Sgt. Roberto Morales, MDPD Professional Compliance Bureau; Gerard P. Dumorange, Complainant

Complaint: Mr. Dumorange stated that on Friday, January 2, 2004, he was with friends at the Bel'Fouchet Restaurant when he saw the drivers of a marked MDPD vehicle and a marked MPD sergeant's vehicle talking to each other at a Shell gas station near 8200 North Miami Avenue. Mr. Dumorange believes the driver of the Miami police vehicle was Sgt. Pino. When the sergeant left, Mr. Dumorange approached the MDPD officer (Michael Scott) and inquired about the Miami sergeant with whom he had been talking. When Officer Scott did not identify the sergeant, Mr. Dumorange gave him a newspaper which reported Mr. Dumorange's termination from the Miami Police Department.

The complainant states that later, at approximately 8pm, Officer Scott pulled him over for speeding. During the stop the complainant alleges Officer Scott called him a "snitch" and falsely arrested him for "impersonating a police officer." The complainant states he identified himself as a "certified police officer," not as an acting police officer. The complainant also alleges, once in custody, Officer Scott poked him in the forehead and left shoulder to antagonize him into a fight.

The complainant further alleges that on January 7, 2004, around 10pm, undercover MDPD Officer Onel Musibay stopped him at NW 87th Street and 15th Avenue, removed paperwork from his vehicle and remarked to him, "You ain't shit."

The complainant believes these actions stem from a police involved shooting he allegedly witnessed and refused to lie about while working as an officer for the City of Miami Police Department. Mr. Dumorange was terminated on May 27, 2003. He believes Sgt. Julio Pino of the City of Miami Police Department, who allegedly threatened to have him arrested, encouraged Officer Michael Scott to initiate the traffic stop.

Allegations

1. Officer Scott falsely arrested Mr. Dumorange for impersonating a police officer.
2. Officer Scott called Mr. Dumorange a "snitch."
3. Officer Scott poked Mr. Dumorange on the forehead and shoulder to antagonize him into a fight.
4. Officer Musibay removed paperwork from Mr. Dumorange's vehicle without cause.
5. Officer Musibay told Mr. Dumorange: "You ain't shit."

Department Response: *MDPD Case IA 2004-0018 (All of the following italicized information is taken from the MDPD Internal Affairs File IA 2004-0018.)*

Statement of Sergeant Lynn Brooks

Sgt. Brooks stated that she is the squad supervisor of the District's Crime Prevention Unit (CPU). Sgt. Brooks stated that on Friday, January 2, 2004, she responded to NW 2 Avenue and 79 Street at the request of Officer Michael Scott, who had a traffic violator (the complainant) stopped at that location. Officer Scott told her that the complainant claimed to be a City of Miami police officer. Officer Scott stated he felt the complainant was not an officer, but rather was impersonating one. Sgt. Brooks stated that Officer Scott told her that he stopped the complainant for speeding. Officer Scott told Sgt. Brooks that when he informed the complainant why he had been stopped, the complainant responded by saying that he knew what speeding was, because he is a police officer, too. Officer Scott told Sgt. Brooks that when he asked the complainant for his credentials, the complainant handed him a Fraternal Order of Police (FOP) identification card and a National Black Police Association (NBPA) identification card, both inscribed with his name. Sgt. Brooks further stated that Officer Scott said that as he pressed the complainant for his police credentials, the complainant admitted he was not presently employed with MPD, but was under suspension.

Sgt. Brooks stated that at this point, she talked to the complainant, requesting that he tell her what had occurred. Sgt. Brooks stated that the complainant repeated the conversation he had with Officer Scott and admitted that he told Officer Scott he knew he was speeding because he is a police officer for MPD. Sgt. Brooks stated that at this time she called MPD Internal Affairs Lieutenant Jose Alfonso. Lt. Alfonso told Sgt. Brooks that the complainant had been terminated from the MPD and should not have represented himself as an MPD officer. Sgt. Brooks stated she also called Miami-Dade Assistant State Attorney (ASA) Aseal Fein. ASA Fein told Sgt. Brooks that based on the applicable Florida State Statute, the complainant did violate the law and could be charged with

"Impersonating a Police Officer." Sgt. Brooks stated that at no time did she hear anyone call the complainant a "snitch." Upon arresting the complainant, the complainant was seated in Officer Scott's marked police vehicle. The complainant was then transported to NW 6 Avenue and 79 Street, where Sgt. Brooks also responded, reviewed and signed the arrest affidavit. Sgt. Brooks stated that she never observed Officer Scott poke the complainant in the forehead or left shoulder.

Sgt. Brooks stated that on Wednesday, January 7, 2004, she and her squad worked a detail in the north end of the district. Sgt. Brooks stated that she and the squad were exclusively in the area of NE 148 Street and West Dixie Highway between 9:00 pm and 11:00 pm. Sgt. Brooks stated her squad operated marked police vehicles, and no one drove an unmarked vehicle. Sgt. Brooks stated that the squad members, including Officer Onel Musibay, were working the detail. Sgt. Brooks stated she had no knowledge that the complainant was alleging that Officer Musibay had stopped him at NW 15 Avenue and 87 Street.

Statement of Officer Lyn Evelyn

Officer Evelyn stated that on Friday, January 2, 2004, he responded to the area of NW 2 Avenue and 79 Street to meet Sgt. Brooks, to have her sign paperwork. Officer Evelyn stated that he did not witness Officer Scott poke the complainant in the forehead or in the left shoulder.

Officer Evelyn stated that on Wednesday January 7, 2004, he and the CPU were assigned to a detail at NE 148 Street and West Dixie Highway. Included in the detail was Officer Musibay, who was driving a marked police vehicle. Officer Evelyn stated that he had no knowledge of the traffic stop of the complainant at NW 15 Avenue and 87 Street.

Statement of Officer Jean Kenol

Officer Kenol stated that on Friday, January 2, 2004, he responded to NW 2 Avenue and 79 Street to have Sgt. Brooks sign an arrest affidavit for a suspect that he had arrested. Officer Kenol stated that he never heard anyone call the complainant "snitch" see or Officer Scott poke the complainant.

Officer Kenol stated that on Wednesday, January 7, 2004, he and the rest of the CPU, which included Officer Evelyn, worked a detail at NE 148 Street and West Dixie Highway. Officer Kenol stated that he had no knowledge of the traffic stop of the complainant at NW 15 Avenue and 87 Street on Wednesday, January 7, 2004.

Statement of Officer Alton Martin

Officer Martin stated that on Friday, January 2, 2004, he responded to the area of NW 2 Avenue and 79 Street, to assist Officer Scott in an investigation he was conducting. Officer Martin stated that upon arriving, he saw that Sgt. Brooks and Officers Evelyn and Musibay were on the scene. Officer Martin stated that he never heard anyone call the complainant a "snitch." Upon being handcuffed, the complainant was seated in Officer Scott's marked police vehicle. Once inside the police vehicle, the complainant was transported to NW 6 Avenue and 79 Street by Officer Scott, where he completed his paperwork. Officer Martin stated that he too responded to this location with Officer Scott. While at this location,

Officer Martin never saw Officer Scott poke the complainant in his forehead or left shoulder.

Officer Martin stated that on Wednesday, January 7, 2004, he and the CPU were assigned to work a detail in the area of NE 148 Street and West Dixie Highway. Included in this detail were Officers Musibay, Scott, Evelyn, Kenol and Sgt. Brooks. Officer Martin stated that at approximately 11:00 pm, he backed up Officer Musibay on a traffic stop at NE 143 Street and West Dixie Highway. Officer Martin stated he had no knowledge of the traffic stop conducted on the complainant at NW 15 Avenue and 87 Street and that Officer Musibay never brought it up in conversation.

Statement of Officer Michael Scott

Officer Scott stated that on Friday, January 2, 2004, he was patrolling in the area of NW 79 Street and 2 Avenue when he observed the complainant's vehicle speeding. Officer Scott, who was operating a marked police vehicle, activated his overhead lights and stopped the complainant. Upon approaching the vehicle, the complainant asked Officer Scott, "Why the fuck did you stop me?" Officer Scott told the complainant that the reason he was stopped was for speeding and for having "illegal tints." Officer Scott stated that the complainant told him that. "I know what speeding is. I'm a police officer, too. And I was not speeding." Officer Scott stated that he asked the complainant for his driver's license and his law enforcement credentials, at which time the complainant produced a Fraternal Order of Police identification card, a National Black Police Association identification card and a concealed firearms permit. Officer Scott stated that he again asked the complainant for his police credentials but the complainant stated that he did not have them in his possession. Officer Scott stated that the complainant never told him that he was a former member of the MPD. This fact was only discovered after Sgt. Brooks arrived and called MPD Internal Affairs Lt. Alonso.

Officer Scott denied that he called the complainant a "snitch," or that he had seen the complainant at the Shell gas station at 8200 North Miami Avenue. Officer Scott stated that the decision to arrest the complainant was made after Sgt. Brooks spoke to the SAO via telephone. Upon being placed under arrest, the complainant was seated in Officer Scott's marked police vehicle. Officer Scott stated that he was at the scene for approximately 2 hours before transporting the complainant to NW 79 Street and 6 Avenue. While at the location, Officer Scott was met by Sgt. Brooks, who signed the arrest affidavit. Officer Scott denied that he poked the complainant in the forehead or left shoulder in an effort to antagonize him to fight. Upon completing his paperwork, Officer Scott transported the complainant to the Miami-Dade County Jail.

Statement of Officer Onel Musibay

Officer Musibay stated that on Friday, January 2, 2004, he responded to the area of NW 2 Avenue and 79 Street, when Officer Scott requested Sgt. Brooks to respond to that location. Officer Musibay stated that Sgt. Brooks was a passenger in his marked police vehicle. Upon arriving at the location, Officer Scott and Sgt. Brooks conversed. Officer Musibay stated that after the complainant was arrested, he assisted in having the complainant's vehicle towed. It was at this time that he noticed a lot of newspapers on the rear seat of the complainant's vehicle. Officer Musibay stated that at no time did he hear Officer Scott or

anyone else call the complainant a “snitch” nor did the complainant say that he had been called a “snitch.” Officer Musibay stated that at no time did he see Officer Scott poke the complainant in his forehead or in the left shoulder.

Officer Musibay stated that on Wednesday, January 7, 2004, he, along with the rest of the CPU, was assigned to a detail in the area of NE 148 Street and West Dixie Highway. Officer Musibay denied that he had stopped the complainant at NW 15 Avenue and 87 Street, and removed paperwork from the vehicle. Officer Musibay denied that he told the complainant, “You ain’t shit.”

Additional Information

- 1. On Friday, January 2, 2004, Officer Scott issued Mr. Gerard Dumorange three traffic citations; for Speeding, Failure to Display a License Plate, and for having Restrictive Material on the Windows of his Vehicle. On Wednesday, April 7, 2004, all three citations were dismissed. A reason for the dismissals could not be determined.*
- 2. On Thursday, June 17, 2004, Mr. Jean Faustin and City of Miami Police Officer Ernest Arney were interviewed at 8267 North Miami Avenue, at the Bel’Fouchet restaurant. Mr. Faustin and Officer Arney’s names were provided by the complainant as the individuals he met with at the restaurant prior to his arrest by Officer Michael Scott on Friday, January 2, 2004. Both Mr. Faustin and Officer Arney stated they did not witness the arrest of the complainant. They also stated they did not observe a marked MDPD, nor a City of Miami PD marked police vehicle, parked at the Shell gas station located on 8200 North Miami Avenue. Both Mr. Faustin and Officer Arney stated that when the complainant departed the restaurant, he did so by driving south on North Miami Avenue. Mr. Faustin and Officer Arney stated they did not see the complainant at the Shell gas station, and that their view of the Shell gas station was partially obstructed by a building on the south side of the restaurant.*

MDPD Disposition

The following is quoted from the MDPD Disposition Panel memorandum dated November 18, 2004

Allegation #1: On Friday, January 2, 2004, Officer Michael Scott called the complainant a “snitch”.

“NOT SUSTAINED”

Officer Scott denied calling the complainant a “snitch”. There are no independent witnesses to support the allegation.

Allegation #2: On Friday, January 2, 2004, Officer Michael Scott poked the complainant on the forehead and left shoulder to antagonize the complainant into a fight.

“NOT SUSTAINED”

Officer Scott denied poking the complainant in the forehead and left shoulder to

antagonize him into a fight. There are no independent witnesses to support the allegation.

Allegation #3: On Wednesday, January 7, 2004, Officer Onel Musibay stopped the complainant and removed his paperwork from his vehicle without cause.

“UNFOUNDED”

Officer Musibay denied stopping the complainant on January 7, 2004 at NW 87th Street and 15th Avenue and removing paperwork from his vehicle without cause. Officer Musibay’s Daily Activity Report has him working a Crime Prevention Unit detail at another location at the time of the alleged stop. The site of the alleged encounter is also outside Officer Musibay’s assigned district. There are no independent witnesses to support the allegation.

Allegation #4: On Wednesday, January 7, 2004, Officer Onel Musibay told the complainant, “You ain’t shit.”

“UNFOUNDED”

Officer Musibay denied stopping the complainant at NW 87th Street and 15th Avenue on Wednesday January 7, 2004 and stating to the complainant, “You ain’t shit.” Officer Musibay also denied removing any paperwork from the complainant’s vehicle. Sergeant Lynn Brooks, Officer Musibay’s supervisor, stated he was working on her squad during the date in question. Officer Musibay’s Daily Activity Report confirms Sgt. Brooks’ statement. There are no independent witnesses to support that the stop and allegation occurred.

IRP Committee Remarks:

Concerns about IA & Court Statements

Dr. Diaz asked Mr. Dumorange why his statement to IA referred to the City of Miami Police Sergeant he saw at the Shell gas station as Joe Bakers instead of Sergio Pino. Mr. Dumorange stated he saw Sgt. Pino and does not know who Joe Bakers is. Dr. Diaz pointed out that the statement said otherwise. Sgt Morales stated he transcribed what was said to him by Mr. Dumorange.

Mr. Dumorange stated there were contradictions in the statements of Sgt. Brooks and Officer Scott. Both Sgt. and Officer Scott stated on their IA and court deposition statements that they read him his Miranda Rights even though, according to him, neither one did. Dr. Diaz brought up the possibility that when Sgt. Brooks stated “we” read him his Miranda she could have been referring to Officer Scott’s action as the unit’s since she was his supervisor.

Mr. Dumorange expressed concerns that Sgt. Brooks’ statement was taken as that of a witness officer not a subject officer. Dr. Diaz asked Sgt Morales why Sgt. Brooks was not interviewed as a subject officer. Sgt. Morales stated that at the time of Mr. Dumorange’s statement he did not mention her as subject.

Mr. Dumorange stated that the statements of the officers could not be trusted since police officers regularly “cover up” for each other. Mr. Dumorange stated when he was an officer he would give false information as to his location. Ms. Boersma asked Mr. Dumorange to clarify his remark. Mr. Dumorange stated he would call in a location by radio when in reality he was at a different location. He stated that’s what occurred when Officer Musibay allegedly stopped him on January 7, 2004 at NW 15 Avenue and 87 Street even though his Daily Activity Report placed him at another location. Dr. Diaz asked Mr. Dumorange if there was any way to help change that practice among police officers. Mr. Dumorange stated that there needs to be greater vigilance among supervisors.

Mr. Dumorange stated that the Shell gas station attendant should have been interviewed. Mr. Dumorange stated that the officers knew where to park their cars at the station so they are out of sight from the cameras. Sgt. Morales stated he talked to the attendant and all the cameras were inoperable.

Concerns about Traffic Stop

Mr. Dumorange stated he was stopped by Officer Scott for speeding and Officer Scott stated his vehicle was calibrated even though it was not. Dr. Diaz confirmed that according to court documents and Officer Scott’s deposition, the vehicle was not calibrated.

Chairman Reynardus asked Sgt. Morales what is the procedure for pacing cars without a calibrated cruiser. Sgt. Morales stated there is no written rule and it is based on the experience of the officer making the stop. An officer may stop someone based on an estimated speed, but whether or not it would hold up in court is up to the judge.

Mr. Robreño asked it is a policy violation for an officer to transport a prisoner in a police vehicle that did not have a restraining cage, as was the case with Mr. Dumorange. Sgt. Morales stated that as long as the officer has permission from a supervisor, or is trailed by a fellow officer in another vehicle it is within policy.

Chairman Reynardus asked if it was standard practice to have a prisoner in back of a police cruiser for three and a half hours. (Mr. Dumorange was arrested at 7:30pm and was booked at DCJ at approximately 11pm) Sgt. Morales stated that this case was a complicated matter since the officers made several phone calls and also had to write the Arrest Affidavit.

Concerns about Bullet from Complainant’s Gun

Mr. Dumorange stated that Officer Scott removed a bullet from his (Dumorange’s) gun at the time of his arrest and threatened him by saying the bullet could “end up anywhere.” Mr. Dumorange stated Officer Scott only documented 19 bullets at the time of his arrest. However, according to Mr. Dumorange, when he was transported to DCJ, the correctional officer on duty noticed the bullet and told Officer Scott he could not bring it in. Mr. Dumorange stated Officer Scott then touched the bullet with his fingers, placing his prints on the bullet, forcing him to book it into property.

Chairman Reynardus asked what type of gun Mr. Dumorange had and how many bullets it could carry. Mr. Dumorange stated it was a .40 caliber Glock and could hold 19 bullets in the magazine plus one in the chamber.

Committee Findings:

1. Whether or not Mr. Dumorange was falsely arrested for impersonating a police officer is a matter for the courts to address. Mr. Dumorange filed a motion to dismiss the charges, which were subsequently dismissed with prejudice.

2. The committee found the allegations made against Officer Michael Scott and Officer Onel Musibay to be **NOT SUSTAINED**. No evidence was found, other than the testimony of Mr. Dumorange, to support the allegations.

Recommendations:

That the Panel adopt the committee's findings and conclude the complaint.